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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal-State Joint Board on Universal
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CC Docket No. 96-45

COMMENTS IN SUPPORT OF PETITION FOR RECONSIDERATION

Operator Communications, Inc. d/b/a Oncor Communications, Inc. ("OCI"), by its attorneys, hereby submits its comments in support of the petition for reconsideration filed by AT&T Corp. ("AT&T") on March 1, 2000 in the above-captioned proceeding, and states as follows:

In its petition, AT&T asks the Commission to reconsider that aspect of the Commission's Memorandum Opinion and Order and Seventeenth Order on Reconsideration in CC Docket No. 96-45¹ wherein the Commission denied several carriers' requests to have the methodology for determining universal service fund contribution levels based on carriers' current year revenues, rather than prior year revenues. OCI is one of the carriers whose request for relief regarding the calculation of universal service contribution levels was denied in the Seventeenth Order on Reconsideration. As OCI explained in previous filings,² the present system of basing universal service funding requirements on carriers' previous year revenues unduly harms and discriminates

¹ Federal-State Joint Board on Universal Service, et al (Memorandum Opinion and Order and Seventeenth Order on Reconsideration), FCC 99-280, released October 13, 1999 ("Seventeenth Order on Reconsideration").

² See, Emergency Petition for Partial Waiver and Comments in Response to National Telephone & Communications, Inc.'s Request for Partial Waiver, filed by OCI July 14, 1998.

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against those carriers whose revenues are declining. OCI's business is limited to providing operator-assisted (so-called "0+") services from public telephones. It is well-documented and not disputed that the 0+ interexchange market is a declining market segment. There are several reasons for that decline. Those reasons include the growth of the prepaid calling card industry, the increase in "dial around" calling (*i.e.*, use of toll carriers other than the carrier serving payphones on a presubscribed basis by dialing 1010XXX, 1-800 or other access codes), and perhaps most significantly, the widespread use of wireless services, including cellular and PCS.

The economic effect of the current system of universal service funding on carriers whose revenues are declining is to increase the percentage of a carrier's current year revenues which must be paid to support universal service. The corollary is equally correct: carriers whose revenues are increasing pay lower percentages of their current revenues to support universal service. As OCI explained in its July 14, 1998 Emergency Petition, the impact on it was to nearly double the percentage of current revenues which went to universal service funding.³ Because the current system creates an economic hardship on such carriers, OCI was disappointed that the Commission chose not to grant the requested relief.

AT&T's petition not only corroborates the current system's adverse impact on those carriers whose revenues are declining but also notes correctly that the current system will provide an unanticipated competitive advantage to the newest providers of interstate interexchange services – the Bell Operating Companies ("BOCs"). With one BOC already authorized by the Commission pursuant to Section 271 of the Communications Act to provide interexchange

³ *Id.* at 5.

service,⁴ another application (SBC's application for Section 271 authority for Texas) pending, and others expected soon, the competitive significance of the issue raised in AT&T's petition can neither be ignored nor underestimated.

Based upon Bell Atlantic's early success in the New York interLATA market and the phenomenal success enjoyed by other incumbent local exchange carriers upon entering the interexchange markets in their home territories (including, for example, Southern New England Telephone Company in Connecticut), it is probable that these companies will enjoy substantial interLATA toll revenues during their first year of providing those services. Unlike their competitors, however, those companies' universal service funding requirements will be based on no revenues from interLATA services (other than a few situations where BOCs have been permitted to provide incidental "corridor services"). While existing interexchange carriers – including AT&T, OCI and others – must contribute to universal service based on previous year interLATA revenues and then determine whether to absorb those funding costs or pass them through to their consumers, the BOCs will not have to face that issue. Stated simply, by limiting BOCs' universal service funding requirements to their previous year subscriber line charge, special access and corridor services revenues while enjoying substantial interLATA toll revenues made possible by Commission Section 271 authorization, those companies will be receiving their first year interLATA toll revenues free from universal service funding.

In the Seventeenth Order on Reconsideration, the Commission states that the universal service contribution worksheet approved in 1997 explained that contributions would be based on

⁴ Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, FCC 99-404, released December 22, 1999.

prior year revenues.⁵ That may be so. However, nothing in the Universal Service Second Order on Reconsideration,⁶ indicates that the Commission had given any thought at all to the impact of that funding approach on the competitive marketplace following the eventual entry by BOCs in the interLATA services market. In short, those economic impacts did not appear to be on the Commission's "radar screen" in 1997.

Lest there be any misunderstanding, the inequity and anticompetitive impact of basing universal service contributions on previous year revenues is not a one year problem which will dissipate following the first year of BOC provision of interLATA services and receipt of interLATA revenues. The inequity will continue and will become more pronounced in succeeding years. As those companies continue to grow their interLATA businesses, they will be the primary beneficiaries of the regulatory lag occasioned by the current method of funding universal service based on previous year revenues. Whatever the stated percentage level for universal service funding, that level will be lower for those companies whose revenues are higher than those earned during the previous year. Moreover, as AT&T correctly points out, this inequity is exacerbated by the recent court of appeals decision in Texas Office of Public Utility Counsel v. FCC.⁷ By ruling that intrastate revenues may not be included in the universal service assessment base, the court precluded any possibility that interexchange carriers could enjoy local (intrastate) service revenues free from universal service funding which would have somewhat countered the windfall which will be enjoyed by those BOCs earning interLATA revenues.

⁵ Seventeenth Order on Reconsideration, *supra* at ¶ 7.

⁶ Federal-State Board on Universal Service (Report and Order and Second Order on Reconsideration), 12 FCC Rcd 18400 (1997).

⁷ 183 F.3d 393 (5th Cir. 1999).

As OCI and others demonstrated several years ago and as AT&T now has demonstrated in its petition for reconsideration, the current universal service funding system unduly penalizes those carriers whose revenues are declining from year to year and unduly benefits those carriers whose revenues are growing – most notably the BOCs following their entry into interLATA service markets. Not only does this system fundamentally undermine the principles of being equitable, nondiscrimination and competitive neutrality, the system is unnecessary. Contrary to the conclusory and unexplained statements in the Seventeenth Order on Reconsideration, alternatives exist which would be equitable, nondiscriminatory and competitively neutral, and which would be easy to administer.

Like OCI in 1998, AT&T's petition suggests a system in which carriers would report, and have their universal service contributions based upon, current revenues. In order to protect against underreporting and shortfalls, carriers would be subject to a true-up mechanism.⁸ Basing contribution requirements on current earnings subject to true-up or reconciliation is neither unusual nor unduly cumbersome. In fact, such a system is familiar to and used by virtually every citizen, corporate and individual – the income tax system. Taxpayers do not pay each year's federal and state income tax based on previous year income. They pay on a current basis based on current income, either through payroll deductions or through required quarterly estimated tax payments. Shortly after the end of the tax year (usually in April of the following year), taxpayers are required to submit a tax return in which they "true up" and either remit additional payments to rectify underpayments during the tax year or receive refunds in the event of overpayments. The Seventeenth Order on Reconsideration does not articulate any reason, nor is OCI aware of

⁸ AT&T petition at 6, OCI 1998 emergency petition at 7-8.

any reason, why a comparable system of basing universal service contribution levels on current revenues subject to periodic true-up or reconciliation would not be workable. OCI believes that such a universal service funding system could be implemented. Any resulting burden on contributing carriers and on the Universal Service Administrative Corporation would be minor and would be far outweighed by enhancing equitable treatment, eliminating discriminatory impacts and advancing the public interest goal of competitive neutrality.⁹

⁹ Another alternative which the Commission rejected would have allowed carriers to choose whether to have universal service contributions based on current or prior year revenues. The Commission rejected this approach because of asserted “administrative burdens” of running two methods concurrently. Seventeenth Report and Order, *supra* at ¶ 24. The Commission’s stated objection to such an approach disregards the fact that the Commission has in other situations established and sanctioned alternative approaches. For example, many small and medium-size local exchange carriers are allowed to elect whether to have their access service charges subject to price cap regulation or rate of return regulation. See 47 C.F.R. Part 69. Also, the Commission’s presubscribed carrier verification rules allow carriers to select among multiple permissible carrier verification methods. See 47 C.F.R. § 64.1100.

Accordingly, Operator Communications, Inc. d/b/a Oncor Communications, Inc. supports the petition for reconsideration filed in this proceeding by AT&T Corp. and respectfully urges the Commission to reconsider the universal service contribution requirements in a manner such that universal service funding levels would be based on carriers' current interstate revenues subject to periodic true-up or reconciliation.

Respectfully submitted,

OPERATOR COMMUNICATIONS, INC.
d/b/a ONCOR COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "M. F. Brecher", written over a horizontal line.

Mitchell F. Brecher

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April 20, 2000

CERTIFICATE OF SERVICE

I, Melodie Kate, a secretary in the law firm of Greenberg Traurig, certify that I have this 20th day of April, 2000, caused to be sent by first-class mail, a copy of the foregoing Comments in Support of Petition for Reconsideration to the following:

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